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**)ALS No: 11649**

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5. Around 1:00 p.m., attorneys for Respondent faxed a "Separation Agreement & Release" to Respondent's President.
6. Around 3: 00 p.m., Complainant received a telephone call from his wife advising him that the health of their terminally ill daughter, who had just been released from the hospital, had gotten worse and urged Complainant to come home immediately.
7. Complainant could not leave at that time because the company truck usually available to him was not available.
8. Complainant attempted to find other transportation home to see about his daughter.
9. At approximately 3:30 p.m., the Complainant's wife telephoned Complainant again and urged him to come home immediately.
10. Around 4:00 p.m., Respondent instructed all employees to go into the front room and asked Complainant and two other managers to remain in the back office.
11. Respondent then discharged Complainant, produced the separation agreement, and requested Complainant to sign it.
12. While Complainant was reading the Agreement, his wife called again to urge him to come home.
13. Respondent then informed Complainant that if he signed the Agreement, the employer would not cause problems and would not contest unemployment benefits.
14. Complainant signed the Agreement, dated it January 14, 2000, and accepted a ride from a co-worker to go home to be with his daughter.
15. The Agreement was also signed by the president of Respondent Corporation, Richard C. Erkert, Jr., and dated January 14, 2000.
16. Complainant's daughter died several hours later.
17. Complainant accepted the benefits promised to him under the Agreement, including monetary and health.
18. The Agreement provided in relevant part that the parties agree as follows:

Employee represents that he has not filed any complaints, charges, lawsuits, or any other claims of whatever character against the Company arising out of the employment relationship or termination of employment and that he will not do so at any time hereafter with respect to any claims. . .

In consideration for the terms and conditions set forth in this Agreement, the Company will provide the following benefits: . . . Payment as salary continuation to employee in the amount of \$3,798.21. . . The Company will not oppose Employee's claim for unemployment compensation benefits...

In consideration of the payments... Employee hereby releases and discharges the Company. . . from any claims, obligations and liabilities which Employee may have against the Company, including but not limited to all claims which may be asserted under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964 ( including amendment) and the Wisconsin Fair Employment Act...

Employee represents and agrees that prior to the execution of the Agreement he was fully advised to consult with an attorney to discuss all aspects of his

Agreement, and that to the extent desired, he has availed himself of that right. Employee further represents and agrees that he has been given a period of at least twenty-one days to consider this Agreement and to the extent he has executed this Agreement prior to the expiration of that period, he has done so knowingly and voluntarily...

This Agreement shall become effective and enforceable at the conclusion of the seven-day revocation period...

Please read carefully. This release includes the release of all known and unknown claims.

### **Discussion**

Illinois courts encourage the settlement of claims as a matter of public policy. *Serra and Coca-Cola Bottling Co.*, \_\_ Ill HRC Rep. \_\_ (Charge No. 1988CF3836, Sept. 20, 1996), citing *McAllister v. Hayes*, 165 Ill.App.3d 426, (3d Dist. 1988), and *Keyes and Cook County Forest Preserve*, \_\_ Ill.HRC Rep. \_\_ (1989CF1862, June 29, 1992).

This matter can be resolved pursuant to traditional contract theory. The burden of proving the existence of the settlement is on the party alleging it. *Kugelman v. Village of Hoffman Estates*, 236 Ill.App.3d 407 (1<sup>st</sup> Dist. 1992). No argument as to contract formation has been presented; however, the record supports that the three elements of contract formation are present: an offer, an acceptance and consideration. *Steinberg v. Chicago Medical School*, 69 Ill.2d 320 (1977). Respondent offered to pay Complainant a monetary salary continuance, to not contest any claim for unemployment compensation benefits, and to pay a premium for health insurance coverage, if Complainant would sign an agreement agreeing to release Respondent from all claims relating to termination of his employment. Complainant accepted this offer by signing the agreement and release. It is undisputed that Respondent has satisfied its obligations under the Agreement and Complainant has accepted the benefits as agreed in the offer.

The inquiry next proceeds to whether a valid defense to contract formation exists. Complainant defends under the theory of duress and unconscionability.

### **Unconscionability and Duress**

Complainant contends that Respondent took unfair advantage of Complainant by requesting him to sign the Agreement at a time when it knew Complainant was under personal stress related to obtaining transportation to get home to his terminally ill daughter. Complainant further maintains that Respondent's actions at threatening to contest Complainant's unemployment benefits amounted to a deprivation of Complainant's ability to voluntarily waive his rights. Complainant argues that Respondent acted unconscionably by taking advantage of Complainant in presenting the Agreement to him at the precise time that Complainant was under extreme personal duress concerning information related to his daughter's condition.

Complainant is not arguing that the terms of the Agreement are unconscionable, but that Respondent's "timing" in presenting the Agreement for signature is the unconscionable act. Therefore, I will address the theory of duress in light of the timing of the presentation to Complainant of the Agreement.

To show duress, the Complainant must show that he was deprived of the exercise of his free will by a wrongful or unlawful act of the opposing party. *Serra, supra*, citing *Enslen v. Village of Lombard*, 128 Ill.App.3d 531, (2d Dist. 1984), and *Williams and Illinois Central Gulf Railroad*, \_\_\_ Ill. HRC Rep. \_\_\_ (1987CF 0636, 1987 CF1148, Oct. 5, 1992).

The record supports that Respondent was not responsible – as tragic as that condition was—for the medical condition of Complainant's daughter at the time Complainant was being discharged. Complainant chose to sign the Agreement, although he could have easily taken it with him to review at a later time -- as the terms of the Agreement allowed Complainant 21 days to seek legal counsel or to otherwise contemplate the Agreement prior to signing. Further, although Complainant chose to sign the Agreement shortly after it was presented to him, Complainant -- by operation of the terms of the Agreement -- was allowed 7 days following the signing of the Agreement to change his mind and invoke the revocation clause. Complainant failed to take advantage of any of these safeguards.

A party's act in signing a contract remains voluntary, even if he signs because of straitened circumstances, as long as he has had ample time for inquiry, examination and reflection and the party benefiting was not responsible for circumstances creating the necessity. *Hyde v. Lewis*, 25 Ill. App.3d 495 (1<sup>st</sup> Dist. 1975).

Complainant has not demonstrated that he was deprived of his free will by any wrongful act of the Respondent. The record supports that Complainant had, at all times, the meaningful freedom of choice to refuse to sign the Agreement or to rescind his signature within 7 days and pursue all remedies available to him.

Even though Complainant has not directly alleged that the Agreement itself is unconscionable, I will address that issue. Complainant does not contend he was incompetent or "out of his senses" when he signed the agreement. Complainant merely alleges that he was – understandably -- upset and preoccupied with getting to his daughter's side when the Agreement was presented to him. Also, there is nothing in the record to suggest the terms of the Agreement were such that nobody in "in his senses" would have agreed to, *Hartford Fire Insurance Co. v. Architectural Management, Inc.* 194 Ill.App.3d 110, 116 (1<sup>st</sup> Dist. 1990), nor is there any support that the terms unreasonably favored Respondent so as to warrant a finding of unconscionability.

### **Conclusions of Law**

1. The Commission has jurisdiction over the parties and subject matter of this action.
2. The Parties entered into a binding contract to settle all claims arising out of Complainant's discharge, including claims pursuant to the Illinois Human Rights Act.

3. Neither the Agreement nor the circumstances surrounding the presentation of the Agreement to the Complainant were unconscionable.
4. The Complainant was under no duress when he signed the Agreement.
5. The terms of the Agreement are clear and unambiguous.
6. Where the Parties have entered into a settlement agreement that constitutes a valid contract, and no valid defense to contract formation is demonstrated, the Commission has the authority to dismiss the case, with prejudice. *Serra, supra*.
7. The OWBDA does not apply to claims pursuant to the Illinois Human Rights Act, *Karnes v. Waste Management Inc.*, \_\_ Ill HRC Rep. \_\_ (Charge No. 1994 SA0756, Sept. 9, 1996).

### **Determination**

The Parties reached an agreement to settle all claims arising out of Complainant's discharge, including claims pursuant to the Illinois Human Rights Act. The settlement agreement constituted a binding contract which was not unconscionable; Complainant was under no duress when he signed the Agreement; Complainant failed to avail himself of the 21-day opportunity to seek legal counsel prior to signing the Agreement; Complainant failed to avail himself of the 7-day opportunity to revoke the Agreement subsequent to having signed it; and the terms of the Agreement are clear and unambiguous, justifying dismissal of this matter with prejudice.

### **Recommendation**

I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

### **HUMAN RIGHTS COMMISSION**

By: \_\_\_\_\_  
**SABRINA M. PATCH**  
**Administrative Law Judge**  
**Administrative Law Section**

**ENTERED: May 30, 2002**